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MEMORANDUM OF LAW

DATE: October 28, 1997

TO: Ann Hix, Citywide Volunteer Coordinator

FROM: City Attorney

SUBJECT: Publicizing Mayor and City Council's Office Volunteer Opportunities

You have asked for a written response to two questions about publicizing the Mayor and City Council's office volunteer opportunities.

QUESTIONS PRESENTED

1. Are there any legal reasons why volunteer jobs with the Mayor or City Council's offices cannot be listed and described on The City of San Diego Volunteer Program Web Page, along with all of the volunteer jobs currently listed for City departments?

2. Are there any legal reasons why volunteer jobs with the Mayor or City Council's offices cannot be listed and described in the City's printed Volunteer Opportunities Brochure and more detailed Volunteer Opportunities Bulletin, along with all of the volunteer jobs currently listed for City departments? If so, please explain.

SHORT ANSWERS

1. No, not under current law. The law may change in the near future.
2. Yes, the laws governing printing and distribution of mass-produced documents that contain the names of elected officers may limit the numbers of Volunteer Opportunities Brochures and Bulletins that may be printed at public expense, and may affect the manner of distribution of those brochures and bulletins.

ANALYSIS

Both of your questions raise issues under the “mass mailing” provisions of the Political Reform Act of 1974 (codified at California Government Code sections 81000-91014). In relevant part, the Act states: “No newsletter or mass mailing shall be sent at public expense.” Cal. Gov’t Code § 89001. The term “mass mailing” means “over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry.” Cal. Gov’t Code § 82041.5.

These laws have been interpreted in a regulation adopted by the Fair Political Practices Commission (FPPC), which is the state agency charged with administering and enforcing the Political Reform Act. Cal. Code Regs. tit. 2, § 18901. A copy of that regulation is attached.

Items Mentioning or Featuring an Elected Official

Not all mass mailings are prohibited. Only those that mention or “feature” an elected officer in an impermissible way are prohibited. Cal. Code Regs. tit. 2, § 18901(a)(2). Specifically, a mass mailing impermissibly mentions an elected officer if it either:

(A) Features an elected officer affiliated with the agency which produces or sends the mailing, or

(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

The term “features an elected officer” means that “the item mailed includes the elected officer’s photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface or type color.” Cal. Code Regs. tit. 2, § 18910(c)(2).

An item does not necessarily have to “feature” an elected officer to fall within the prohibition. Mere reference to an elected officer’s name may trigger the prohibition if the mailing is prepared or sent in “cooperation, consultation, coordination, or concert with the elected officer.” Cal. Code Regs. tit. 2, § 18901(a)(2)(B).

Thus, if the Volunteer Opportunities Brochures and Bulletins are delivered in the manner discussed below, they may not bear the names or offices of the Mayor and City Council because

the information about volunteer positions would necessarily have to be provided to you by those offices.

Meaning of “Sent”

An item is “sent” when it is delivered by any means, not just by the U.S. mail, to a person’s residence, place of business, or post office box. Cal. Code Regs. tit. 2, § 18901(a)(1). Items that are distributed at community meetings, or are made available for people to pick up at City offices, libraries, park and recreation centers, or other community gathering places do not fall within the prohibition. Thus, the Volunteer Opportunities Brochures and Bulletins can have the names or offices of the Mayor or City Council and be made available to groups at City Hall and other City buildings or events without triggering the mass mailing prohibition. But they cannot be “sent.”

Types of Items Covered in a “Mass Mailing”

To be subject to this regulation, the item delivered to the recipient must be tangible. That is, the item must be a written document, record, videotape or button. Even though delivered by electronic means to people’s residences, businesses or post office boxes, items on the City’s Web pages are not covered by the mass mailing prohibition. In re Peltzer, FPPC Priv. Adv. Ltr. A-97-106 (Mar. 25, 1997). The FPPC has put the public on notice, however, that they expect the law to change in this area in the near future. In re Peltzer, FPPC Priv. Adv. Ltr. A-97-106 (Mar. 25, 1997). The current state of the law is that the written Volunteer Opportunities Brochure and Bulletin containing the information regarding the City’s volunteer programs are subject to the “mass mailing” prohibition, but the same information contained on the City’s Web site is not.

Solicited Requests for Information

The prohibition against mass mailings only pertains to unsolicited requests. Cal. Gov’t Code §§ 82041.5, 89001; Cal. Code Regs. tit. 2, § 18901(a)(4). If you receive a request for information about the City’s volunteer opportunities, you may send copies of the Volunteers Opportunities Brochure or Bulletin despite the fact that an elected officer is featured or mentioned in it.

Two Hundred per Calendar Month

The law only prohibits distribution of more than two hundred substantially similar items per calendar month. Cal. Code Regs. tit. 2, § 18901(a)(4). Therefore, if you sent 200 brochures on September 30, you could send another 200 on October 1.

Distribution or Preparation at Public Expense

The law prohibits any public money from being spent to distribute a mass mailing. Cal. Code Regs. tit. 2, § 18901(a)(3)(A). The law also prohibits more than \$50 from being spent to design, produce, or print an otherwise prohibited mass mailing. Cal. Code Regs. tit. 2, § 18901(a)(3)(B). In other words, even if an outside donor pays for the costs of distribution of an otherwise prohibited mass mailing, the mass mailing will still be prohibited if more than \$50 of design, production, or printing costs were paid for by the City.

CONCLUSION

The Political Reform Act of 1974 prohibits public money from being spent on mass mailings that mention or feature the names or offices of elected officers. No more than 200 copies of the Volunteer Opportunities Brochures and Bulletins may be distributed per calendar month, if those brochures impermissibly mention or feature elected officials. This law also affects their manner of distribution.

CASEY GWINN, City Attorney

By

Cristie C. McGuire
Deputy City Attorney

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Attachment

ML-97-28

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